Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)))	CS Docket No. 95-61

Comments

These comments are filed on behalf of CNBC, America's Talking and Canal de Noticias (jointly referred to herein as "CNBC") in response to the Notice of Inquiry (NOI) released by the Federal Communications Commission ("Commission") on May 24, 1995 in the above-referenced proceeding. In particular, CNBC responds to the Commission's request for comment on whether the statutory program access rules embodied in Section 628 of the 1992 Cable Act should be extended to include non-vertically integrated satellite program providers. It is not at all clear why the Commission has raised the prospect of a dramatic extension in current law to cover unaffiliated cable programmers, or what possible justification the proponents, whomever they may be, have suggested for making such a change. A recommendation by this agency that Section 628 should be so amended would run contrary to the direction of the current Congress to utilize the vibrant, increasingly competitive marketplace, not regulation, to govern vendors of telecommunications products and services.[1] Both the Commission and the Congress should be seeking to remove or reduce burdensome government involvement in normally unregulated business relationships, not add to it.

1. CNBC, America's Talking, and Canal de Noticias are all independent cable networks directly or indirectly owned by the National Broadcasting Company, Inc. ("NBC"); no cable operator currently has an attributable ownership interest in any of these networks.[2] In the process of developing its wholly-owned and operated cable services, NBC has spent millions of dollars in a comprehensive marketing effort aimed at achieving maximum distribution of these services over cable, MMDS, DBS, SMATV and other distribution technologies. In order to offer high quality cable program services in the extremely competitive cable program marketplace, NBC has pursued two goals -- obtaining the widest possible distribution and viewership, and maximizing revenues from both affiliate fees and advertising

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[1]The House and Senate have soundly rejected several proposed new measures in the legislative process to impose further artificial access and pricing obligations on vertically integrated satellite programmers.

[2]Additionally, NBC has a minority ownership interest in several vertically and non-vertically integrated cable networks.

to support such unique program services. CNBC submits it would run contrary to sound policy for the Commission to find that independent networks should be artificially restrained in their distribution agreements as a means of achieving these legitimate goals. Moreover, all three of NBC's cable networks have varied price structures for different classes of distributors based on arms-length negotiations of such pricing arrangements. Such variations in rates of independent programmers are marketplace driven and must not be replaced by regulation of unaffiliated programmers incorporating an artificial standard establishing impermissible pricing deviations.

2. Section 628 of the 1992 Cable Act imposes artificial regulation on a particular class of cable program networks -- satellite networks owned in some part by cable operators. The theory of such a statutory substitution for reliance on the marketplace is that this vertically integrated class of programmers has both the incentive and the ability to favor affiliated cable operators and to discriminate against unaffiliated competitive distributors. In its Program Access Report and Order implementing Section 628, the Commission rejected arguments that the reasonableness of conduct of vertically integrated programmers should be judged by whether it was different from conduct, in similar circumstances, of non-integrated

programmers.[3] In fact, the Commission, in its Program Access Report and Order, acknowledged that non-integrated programmers were not intended to be covered by Section 628 of the Cable Act and would certainly be justified in offering price differentials and various discounts among various distribution technologies.[4] Having recognized that a different standard exists under the statute for affiliated and unaffiliated programmers, the Commission cannot now find the need for access and pricing regulations for non-affiliated entities because their conduct varies from the artificially imposed conduct mandated on vertically integrated entities.

3. In implementing Section 628, the FCC also concluded in its Program Access Report and Order that the intended objectives and scope of Section 628 focused on alleged improper practices that were pursued only by vertically integrated entities. The Commission has suggested nothing in its Notice of Inquiry that would support a recommendation to Congress to expand the scope of Section 628 to encompass non-vertically integrated programmers. Indeed, just the reverse would seem to be the case. In its 1994 Competition Report, released on September 12, 1994, the Commission stated:

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[3]First Report and Order (MM Docket 92-265), 8 FCC Rcd 3359 at ¶ 104 (1993)("Program Access Report and Order").

[4]Id.

> The Commission's program access rules and its decisions applying those rules have given competing MVPDs access to programming produced by programmers that are affiliated with cable system operators. The Commission does not find it necessary to make any specific recommendations that Congress amend the program access provisions at this time.[5]

Moreover, this 1994 Competition Report, released less than a year ago, found that the program access rules adopted as a result of the 1992 law had been successful in ensuring the availability of programming to competing multichannel distributors.[6] The Commission also concluded that the increasing entry of competitors to cable systems in the short and long term would exert a significant, favorable effect on market conduct and performance.[7] The Commission, as mandated by Congress, has a responsibility to monitor competition in the market for the delivery of video programming. However, there is no basis for the Commission to direct its efforts at expanding the scope of artificial restraints on the marketplace.

4. CNBC submits that cable program networks are already subject to the adverse effects of an expansive series of regulations imposed on cable operators' pricing -- rate regulation of cable operators' initial rates on a

[5] First Report, 9 FCC Rcd 7442 at ¶ 192 (1994)("1994 Competition Report").

[6] Id. at ¶ 160.

[7] Id. at ¶ 246.

benchmark basis, regulation associated with the addition, deletion and substitution of cable program networks, restrictions on the timing and scope of program cost pass-throughs, and the lack of upgrade incentives for building new channel capacity for fledgling program services. Each of the NBC-owned cable networks, as well as other independent cable programmers, have struggled to deal with the Commission's cable regulations that only recently have been relaxed in certain instances. While certainly not intended by this agency, all of these regulations, and the constant shifts, revisions and reinterpretations, have had a significant deleterious effect on obtaining distribution of new program services on cable systems. An expansion of the artificial access and pricing rules to independent programmers will provide a more focused disincentive to the expanded distribution of program offerings by introducing the specter of regulatory scrutiny and uncertainty into the independent program vendors' business relationships. Independent cable programmers have no need for more unintended consequences of the Commission's regulatory policy. CNBC submits that the Commission has a responsibility to ensure some reasonable degree of regulatory stability for independent programmers who are investing literally hundreds of millions of dollars in new and existing independent cable programming networks. In pursuing expanded distribution through affiliation agreements, CNBC, America's Talking, and Canal de

Noticias must be allowed to rely on the Congressional policy judgment embodied in the 1992 Cable Act's limited program access provisions and on the Commission's affirmance of that policy judgment in its Program Access Report and Order and the 1994 Competition Report.

CONCLUSION

For the foregoing reasons, CNBC strongly urges the Commission not to recommend that Congress expand the 1992 Cable Act's program access provisions to regulate the marketplace activities of non-vertically integrated cable satellite programming networks.

Respectfully submitted,

CNBC, AMERICA'S TALKING AND CANAL DE NOTICIAS

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